IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4004 OF 2007

Shailesh Mishra ....Petitioner.
V/s
H & R Johnson (India) Ltd. & Ors..... ....Respondents.

Mr.Anand Grover i/by Mr.Prakash Mahadik, Adv. for the petitioner.

Mr.P.A.Anaokar with Mr.Rahul Oak, Adv. For respondents.

CORAM: A.P. DESHPANDE, J.
25.6.2007

PC:

The petitioner takes exception to the judgment and order passed by the Industrial Court rejecting the complaint filed by the petitioner calling in question the decision of the respondent-employer allegedly in forcing the petitioner to submit letter of resignation. It is the case of the petitioner that he was in service of the respondent for a period of 10/12 years and all throughout his work and behaviour was satisfactory. According to the petitioner sometime in November, 2001 the petitioner had disclosed the fact about the petitioner's status of HIV positive to one Shri Hegde who happens to be General Manager of the respondent. It is then submitted that though the work and behaviour of the petitioner was satisfactory all

throughout, he came to be served with a communication dated 9.11.2001 seeking to terminate petitioner's services on account of his unsatisfactory performance. After receiving the communication dated 9.11.2001 the petitioner has rendered resignation letter to the respondent dated 4.12.2001. In the said letter a request is made to revoke the termination and accept the resignation. The respondent seems to have acted on the said request and pursuant to the same the petitioner came to be relieved from service on account of having tendered resignation. The petitioner admittedly received the dues on the basis of the said resignation letter and for the first time questioned the legality and validity of the resignation after almost a period of six months by filing the complaint ULP before the Industrial Court. The moot question that came for consideration before the Industrial Court was as to whether the resignation was voluntary or was it obtained forcibly by coercive methods. The Industrial Court after considering the various circumstances has held that the resignation tendered was voluntary and thus the respondent has not committed any unfair labour practice. Aggrieved by the said judgment and order the present writ petition has been filed. Learned counsel appearing for the petitioner has contended that the conduct of the parties and their antecedents prior to the tendering of letter of resignation have not been considered by the Industrial

Court in their proper perspective. It is submitted that as the work of the petitioner was satisfactory all throughout he was granted increment and the only reason for terminating the service by respondent was solely for the reason that the petitioner was suffering from HIV positive. The Industrial Court has noticed the said circumstance. However in view of the other circumstances such as acceptance of all the dues after tendering resignation and not calling in question the action of the respondent in accepting letter of resignation by terming it as a forced resignation for over a period of six months would outweigh the earlier circumstance. Perused the judgment and order passed by the Tribunal. On the basis of preponderance probabilities the Industrial Court has recorded the findings that the letter of resignation was voluntarily tendered. The said finding is based on evidence on record. Hence no interference at the hands of this Court in exercise of writ jurisdiction is called for. In the result, writ petition is summarily dismissed.

25.6.07.